

B-2
(ii) a first elastic ring integrally connected with said collar-shaped portion having a second diameter larger than said first diameter; and

(b) a means for retaining at said closed end in a vagina near the uterus of a user.--

REMARKS

Pursuant to 37 C.F.R. 1.111 reconsideration of the Official Action of July 25, 1988, and reexamination of the application are respectfully requested.

Claims 21 through 25 are pending. Claims 21, 22, and 23 are amended, claims 24 and 25 are deleted, and claim 26 is added by this response.

An extension of time for 3 months and a check for the SMALL ENTITY fee accompany this response.

Relying on 35 U.S.C. Section 112, second paragraph, the Examiner has rejected claim 23 as being indefinite. Specifically, the Examiner objects to the terminology "adapted for insertion." The claim language has been amended in order to remove the "being adapted" terminology. This rejection should be withdrawn.

Relying on 35 U.S.C. Section 101, the Examiner has rejected claims 24 and 25 as claiming the same invention of claims 2 and 3 of prior U.S. Patent Number 4,735,621. Claims 24 and 25 recite broader claim language than the claims of the patent in that claims 24 and 25 use the term "comprising". Claims 24 and 25 are deleted with this response in order to facilitate prosecution. The applicant does not intend this action to create a file wrapper estoppel against pursuing broader claim language in a subsequent continuation or continuation-in-part application. This rejection is moot.

Relying on 35 U.S.C. Section 103, the Examiner has rejected claims 21 and 22 as being unpatentable over "The Gee Bee Company" brochure in view of Dyck et al. The applicant respectfully

traverses this rejection.

Claims 21 and 22 have been amended to recite "a means for retaining said closed end in a vagina near the uterus of a user." This additional limitation is supported by the specification at page 14 at lines 10 and 11 and at lines 15 and 16. The additional element of a "means for retaining" is not made obvious by the Examiner's citations. Neither of the citations suggests or teaches a structure that retains the closed end of a condom in a vagina. This structure provides the unexpected result of a condom that can be inserted and worn by a female before coitus.

This unexpected result of the applicant's invention is explained in the specification at the paragraph bridging pages 14 and 15. The Examiner's citations do not suggest or make obvious any modifications that will allow their respective structures to be retained in a vagina.

This rejection should be withdrawn.

Relying on 35 U.S.C. Section 103, the Examiner has rejected claim 23 as being unpatentable over "The Gee Bee Company" brochure in view of Dyck et al. as and further in view of Graham. The applicant respectfully traverses this rejection.

The Graham device does not make the applicant's claimed structure obvious because the Graham disclosure does not teach that a "means for retaining" to be placed in the vicinity or near the uterus of the wearer of the condom. This is because the Graham device is designed to retain its breeder's bag by placing a ring between the "bag-like extension 3" and the "tubular end 4". This structural arrangement is desired by Graham in order to provide the "bag-like extension 3" for collecting bull semen.

The Graham device does not make the applicant's claims obvious because the Graham device does not place a means for retaining "at" the closed end of the device in a vagina "near" the uterus of a user. The Graham device does not provide a means for retaining its condom-like structure that comfortably holds a condom in a woman's vagina without interfering with coitus. The Graham device can potentially interfere with human coitus because

it is large, cylindrical, and in rests near the middle of the vagina.

The applicant's means for retaining provides its unexpected results because it is at the closed end of the tubular sack and is lodged near the uterus. In this manner the claimed structure does not provide a cylindrical object through which a penis must pass during coitus. This feature of the applicant's structure allows the condom-like sack to be retained in the vagina in a position that is unlikely to be moved or dislodged by coitus. This unexpected result is not suggested or made obvious by the Examiner's citations because the band 1 of the Graham device is not located at the end of the sack. Graham does not teach placing the band 1 at the end of the sack because the purpose of the device is to form a receptacle for collecting semen.

This rejection should be withdrawn.

Relying on 35 U.S.C. Section 103, the Examiner has rejected claims 22 and 23 as being unpatentable over Graham in view of Dyck et al. The applicant respectfully traverses this rejection.

The structure of this combination of citations does not provide a means for retaining a condom in a vagina near the uterus. The reasons for this failure and its importance is addressed above. Secondly, this combination of citations does not make obvious the applicant's preferred embodiment of claim 23 which has a planar ring that serves as the retaining means. A planar ring provides the unexpected result of a diaphragm-like structure "at" the closed end of the tube. The planar ring securely retains the condom-like tube and remains in a position near the uterus that is less likely to interfere with coitus than the band 1 of the Graham structure.

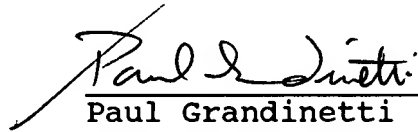
This rejection should be withdrawn.

The Examiner objected to the term "means" in the abstract. The applicant has corrected this term. This objection should be withdrawn.

For the reasons discussed above, applicant respectfully submits that his application is now in condition for allowance. Favorable consideration of this application in light of the above amendments and remarks is respectfully requested. If there are any additional fees required, please charge Deposit Account Number 03-3122.

Respectfully submitted,

MACKLER, COOPER AND GIBBS, P.C.

A handwritten signature in cursive script, reading "Paul Grandinetti", is written over a horizontal line.

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cc: Hessel